

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15310 of Richard Gill, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that does not now meet the lot occupancy and rear yard requirements [paragraph 2001.3(a) and (c),] a variance from the rear yard requirements (Sub-section 404.1), and a variance from the allowable lot occupancy requirements (Sub-section 403.2) for a deck addition to a nonconforming row dwelling in an R-4 District at premises 226 - 12th Street, S.E., (Square 1015, Lot 202).

HEARING DATE: May 23, 1990  
DECISION DATE: June 6, 1990

**FINDINGS OF FACT:**

1. The subject property, known as 226 - 12th Street, S.E., is located on the southeast corner of 12th and Walter Streets, S.E. It is zoned R-4.

2. The property is located in the Capitol Hill Historic District. The area is primarily residential.

3. The lot is developed with a two-story single-family row dwelling. The house was purchased by the applicant in 1976. At that time, there was a deck on the rear of the lower level of the structure. After a period of time, this deck deteriorated, and in 1988, the appellant replaced it with a new deck. The new deck is about 3 1/2 to 4 feet from the ground and extends to about 3 1/2 feet from the rear property line. The applicant also added a new second story deck that spans the entire rear yard and is about 5 1/2 feet wide.

4. The applicant was unaware of the need for variance relief because he was not so informed by his contractor. The property is nonconforming in several respects and the applicant hereby requests variance relief to allow the deck additions to remain.

5. The R-4 District requires a lot area of 1,800 square feet. Only 1,066 square feet is provided. A 20 foot rear yard is required and a lot occupancy of 640 square feet, or 60 percent, is allowed. Without the decks, the rear yard would measure 12 feet. With the decks, however, no rear yard is provided. A rear yard variance of 20 feet or 100 percent is needed. Without the decks, the structure occupies 854.25 square feet of the lot. The decks add another 172.30 square feet to the lot, for a total of 1,026.55 square feet. The applicant therefore needs a variance from the lot occupancy requirements. He also needs a variance to allow an addition to a nonconforming structure.

6. The applicant maintains that because of the small size of the lot there is insufficient space for family activities. He pointed out that the lower deck merely replaced a preexisting one and it even occupies about one foot less of the rear yard than the old one. The applicant stated that the construction is similar to that which formerly existed and that second story decks are common in the neighborhood.

7. The Office of Planning (OP), by memorandum dated May 16, 1990 recommended approval of the application. OP noted that the property is nonconforming and stated that the lot occupancy without the decks is 80 percent. The proposed decks bring the lot occupancy to approximately 96 percent.

8. OP stated that the need for the requested variances flows from the size and shape of the subject property. The subject lot is much smaller than what is required in the R-4 district. This limits the availability of living space on the site. The decks would provide the additional desirable living space that is needed at the premises.

OP stated that there are similar decks in the neighborhood, including the square in which the property is located. OP is of the opinion that the decks generally conform to the pattern in the area and that their retention would not impact the area adversely.

9. Advisory Neighborhood Commission (ANC) 6B, which is automatically a party to the application, did not submit a written statement of issues and concerns regarding the subject application. A representative of ANC 6B did not appear at the hearing to testify in this case.

10. The owner of 1201 Walter Street, S.E. testified in opposition to the location of the upper level deck. The rear of the subject property abuts the western side wall of his structure. This wall is located at the property line.

He stated that the applicant's upper level deck extends to this wall. This will make it difficult to repair the wall where the mortar is eroding because the repairman will be unable to drop the scaffold down past the deck. To access the wall by other means will be more expensive.

11. The applicant agreed to help in having the repairs done by allowing the repairman to work on the wall from the deck.

12. At the end of the hearing, the Board directed the parties to meet and resolve this matter. They were also asked to report to the Board on their agreement.

13. Correspondence received from the parties indicated that

no agreement was reached. The adjacent homeowner requested that the applicant move the deck 30 inches from the wall. The applicant, however, offered to remove railing and deck boards closest to the wall, leaving only the ends of two 2 x 6 boards to work around. The applicant would have the boards temporarily removed when the work on the wall is to be done.

14. No other neighbors testified in the application. Six letters were received supporting the application. There were no letters in opposition.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking area variances and a variance to allow a deck addition to a nonconforming structure. The granting of a variance requires evidence of a practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board further must find that the requested relief can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the burden of proof established for variance relief. The Board concludes that the subject lot is very small and that this condition creates a practical difficulty for the owner in the reasonable use of his property.

The Board concludes that the second level deck will make repairing the adjoining neighbor's wall somewhat more difficult and expensive, however the structure will not prevent the repairs from being done. The applicant has demonstrated a willingness to provide his neighbor with a reasonable amount of assistance by removing portions of the deck and allowing use of the deck by the repairman.

The Board concludes that a number of similar deck additions exist in the surrounding area and that the applicant's structures are compatible therewith.

The Board therefore concludes that the variances can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zoning Regulations and Maps.

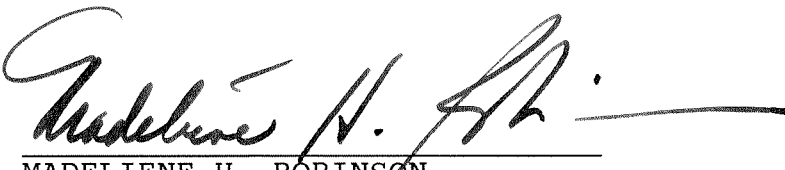
Accordingly, it is hereby ORDERED that the application is GRANTED.

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VOTE: 3-1 (Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Paula L. Jewell opposed to the motion by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Acting Director

FINAL DATE OF ORDER: OCT 17 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15310Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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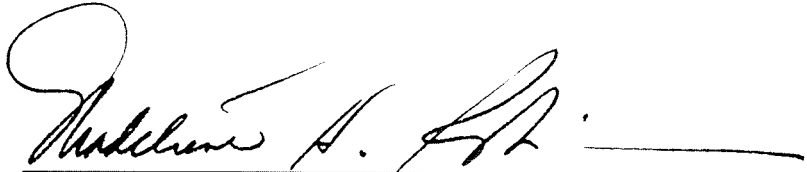
As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 17 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Lenair E. Williams  
6127 Westland Drive  
Hyattsville, Maryland 20782

Dr. Conrad M. Williams  
7220 Hidden Creek Road  
Bethesda, Maryland 20817

Mr. & Mrs. Richard Gill  
226 - 12th Street, S.E.  
Washington, D.C. 20003

Karen Walker, Chairperson  
Advisory Neighborhood Commission 6B  
921 Pennsylvania Avenue, S.E., #108  
Washington, D.C. 20003

  
MADELIENE H. ROBINSON  
Acting Director

DATE: OCT 17 1991

15310Att/bhs